sel—Case at bar. Refusal to continue a chancery suit, in a proper case for a continuance, is good ground for a motion to rehear an interlocutory decree, but the decree should, as a general rule, show that a motion for a continuance was made and overruled. If, however, the decree fails to show that the motion was made, but it is averred in the petition for rehearing, and not denied, this is sufficient. The granting of a rehearing to an interlocutory decree is a matter within the sound discretion of the court, and courts are more liberal in granting rehearings than in reviewing final decrees, especially if a case has not been heard on its merits. Verbal agreements of counsel, especially if disputed, will as a rule be disregarded, but if such agreement results in surprise to one of the parties, and is likely to work injustice to him, the court may grant him relief on equitable terms. In the case at bar, the petition for rehearing presents a case in which the petitioner has a defence to the claim asserted against him, which, if presented at the proper time, would have been a complete answer to the claim, but which was not presented at the proper time because petitioner's counsel honestly believed that an agreement existed between him and the opposing counsel that the cause was to await the hearing of another cause in the same court, involving the same question, in which depositions had been taken, and that the depositions should be read in both causes, and therefore had not taken proof in petitioner's cause. Under these circumstances the rehearing should have been granted.

COOL V. COMMONWEALTH.—Decided at Richmond, December 3, 1896. *Keith*, P:

1. CRIMINAL LAW—*House breaking—Indictment—Time when offence committed.* An indictment for breaking and entering a "mill-house" with intent to commit larceny therein, must charge the time at which the alleged breaking and entering took place, for if done between February 12, 1894, and January 9, 1896, the offence was not a felony, while if done before the first date, or after the latter, the offence is a felony. Time is of the essence of the offence.

BENJAMIN & CO. V. MADDEN.—Decided at Richmond, December 3, 1896.—*Riely*, J:

1. FRAUD PER SE.—*Retention of personal property after sale—Presumption—Case at bar—Sec. 2877 of Code.*—The retention of the possession of personal property by the vendor after an absolute sale is *prima facie* fraudulent against *creditors* of the vendor, but not as against a *subsequent purchaser* for value, without notice of the prior sale, but this presumption may be rebutted by proof. In the case at bar there was a *bona fide* sale for value of a stock of goods, and delivery of possession, and the facts that the vendor did not transfer his license to the vendee before levy on the stock; that the name of the vendor upon the window shades, which had constituted his only sign, remained as before; and that the vendor and his former clerk remained in the store and sold goods, do not, in view of other evidence in the cause, establish a case of fraud upon creditors of the vendor. Nor, under the admitted facts, does sec. 2877 of the Code apply.